



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2013

Mr. Stanton Strickland
Associate Commissioner
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2013-13644

Dear Mr. Strickland:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 495890 (TDI# 139383).

The Texas Department of Insurance (the "department") received a request for the supplemental compensation exhibits for six specified companies. You state the department has no responsive information pertaining to two of the specified companies.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor excludes the names of individuals receiving compensation from the scope of the request. Accordingly, this type of information, which we have marked, is not responsive to the request for information. This ruling does not address the public

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has determined "all financial information relating to an individual - including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history - ordinarily satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." *See* Open Records Decision No. 373 at 4 (1983). Thus, we find salary and compensation information generally meets the first prong of the common-law test for privacy.

The second prong of the *Industrial Foundation* test requires the information in question be not of legitimate concern to the public. In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds, such as a public employee's participation in an insurance program funded wholly or partially by his or her employer, or debts owed to governmental entities. Open Records Decision Nos. 600 (1992), 480 (1987), 385 (1983). In addition, this office has held generally, the public does not have a legitimate interest in a private individual's financial information including the individual's salary and other sources of income. *See* Open Records Decision Nos. 523 at 3-4 (1989), 373 at 3.

Information concerning supplemental compensation of officers and directors of the six specified companies relates solely to private companies' employment relationships with their employees and does not involve public employees, a governmental entity, or the receipt or expenditure of public funds. In this case, no facts have been presented, nor are any apparent, which would establish a legitimate public interest in the salary and compensation information at issue. *See Industrial Foundation*, 540 S.W.2d at 685. As noted above, however, the requestor excludes the names of individuals receiving compensation from the scope of the request. Thus, the names of such individuals are not responsive to the request. Upon review, we find some of the information at issue consists of the financial information of individuals who can be identified from the responsive information. This information, which we have marked, is protected by common-law privacy. Thus, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the responsive information does not contain sufficient information to identify the remaining individuals whose compensation information is at

issue. Thus, the remaining information you have marked relates to individuals who have been de-identified and whose privacy interests are thus protected. Therefore, the remaining information you marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 495890

Enc. Submitted documents

c: Requestor
(w/o enclosures)